

for health care providers. One of the first rules in medicine is, "First do no harm." I believe we have reached the point of harm in many programs, from graduate medical education to home health.

We recall the urgency to balance the Federal budget. We achieved that goal. And we recall how reductions in projected Medicare and Medicaid patients' payments made a significant contribution. I believe too significant. For example, 3 years into our 5-year program, we find the hospital inflation rate running at three to four times their Federal payment updates. The hospital inflation rate is driven by wage and benefit demands in a labor shortage environment, the rising cost of supplies, replacing and adding new technology, responding to greater numbers of uninsured, and adding staff to cope with the increasing complexities of administration.

While I use the hospital example, I am speaking for the entire health care system. Each component faces similar as well as unique challenges. The one common denominator they share is deteriorating margins. Congress has been besieged by countless messages from health care providers telling us of the unintended consequences of the Balance Budget Act; that our reconciliation efforts last year were appreciated but were not enough; and that a 2-year transfusion is needed now.

There is another saying in medicine. "Bleeding always stops." The challenge is to determine the cause of the bleeding and take action before it is too late. Today, I ask my colleagues to join together in a bipartisan effort to recognize the extraordinary health care system we have in America, acknowledging enough is enough, and providing prompt and appropriate Balanced Budget Act relief to stem the bleeding, and to do no more harm to one of our Nation's most valued assets; the American health care system.

URGING LEADERSHIP TO GIVE H.R. 4541 FULL HEARING

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from New York (Mrs. MALONEY) is recognized for 5 minutes.

Mrs. MALONEY of New York. Mr. Speaker, last week's announcement by President Clinton that the Federal Government would swap 30 million barrels of oil from the Strategic Petroleum Reserve was welcome news to myself and many other Members from the Northeast. I remember all too well the effect that last winter's dramatic spike in heating oil prices had on my constituents' heating bills. While the OPEC countries should do the right thing and increase supplies, here on Capitol Hill lobbyists are working behind the scenes to increase their companies' bottom lines at the expense of the public and taxpayers.

I want to take this opportunity to bring to the attention of my colleagues an important piece of energy legislation that may soon be placed on suspension. The Commodity Futures Modernization Act of 2000, H.R. 4541, which was passed by the Committees on Banking and Financial Services, Commerce and Agriculture. This is important legislation for our Nation's financial services and our economy in general.

I am concerned that a provision excluding trading in energy derivatives from proper regulation has been added to this legislation and that the House may not have an opportunity at this late date to debate this provision. The legislation, as reported by the Committee on Banking and Financial Services, increases the legal certainty of financial derivatives by excluding them from regulation by the Commodity Futures Trading Commission. These financial instruments are used by financial institutions and large businesses to offset interest rates, foreign currency, credit and other risks. When used by qualified investors, financial derivatives can reduce risk and increase the efficiency of the economy.

In drafting the Commodity Futures Modernization Act, the House committees closely followed the recommendations of the report of the President's working group on financial markets. The working group, comprised of the Federal Reserve, SEC, OCC, and CFTC, produced its report after months of study of the derivatives market. A central recommendation of the working group was that the exclusion from CFTC regulation should be limited to financial derivatives. Financial derivatives are based on underlying commodities of infinite supply, such as interest rates.

CFTC Chairman William Rainer elaborated on this distinction before the House Committee on Agriculture, and I quote,

H.R. 4541 diverges, however, from the President's recommendations by codifying an exemption for most provisions of the Commodity Exchange Act for transactions in energy and metal commodities. In recommending an exclusion from the CEA for financial derivatives, the working group differentiated between trading financial products and nonfinancial products.

Continuing, he said,

The CFTC has already exempted many types of energy trading from the provisions of the Commodity Exchange Act. But the exemption for energy commodities included in H.R. 4541 expands the scope.

□ 1430

"The Commission's 1993 energy exemption is confined to parties with a capacity to make or take delivery. But this act would extend the exemption beyond those acting in a commercial capacity to encompass all eligible contract participants as defined in the bill."

In other words, the bill that the House may be asked to vote on contains an exclusion for energy products that was not recommended by the report which the House otherwise followed in drafting the bill.

Contributing to my concern is that the public and the CFTC may be handcuffed in monitoring energy derivative prices if trading that currently occurs on energy future exchanges moves to private, multilateral electronic exchanges that the energy companies themselves may own.

Given the historically high energy prices we are currently facing, I believe now is the wrong time to limit our regulators in policing fraud in the energy markets. Again the CFTC, the regulator, agrees with me on this point. Last week I received a letter from Chairman Rainer in which he wrote of the provisions in this bill.

He said, "Charging the Commission with the responsibility to police for fraud and manipulation, however, without conferring authority to right regulations where necessary, leaves the CFTC inadequately equipped to fulfill these responsibilities."

Mr. Speaker, I include for the RECORD the following letter from Chairman Rainer:

U.S. COMMODITY FUTURES
TRADING COMMISSION,

Washington, DC, September 19, 2000.

HON. CAROLYN B. MALONEY,
Member of Congress, House of Representatives,
Rayburn House Office Building, Washington, DC.

DEAR REPRESENTATIVE MALONEY: I am pleased to write you on behalf of the Commodity Futures Trading Commission in response to your recent letter asking for the Commission's position with respect to language in H.R. 4541 that would exempt energy and metals products from regulation under the Commodity Exchange Act.

Before addressing the specifics of the energy and metals exemptions, I would like to emphasize the Commission's support for swift Congressional action on legislation establishing legal certainty for over-the-counter financial derivatives consistent with the unanimous recommendations of the President's Working Group on Financial Markets.

However, all versions of H.R. 4541 also contain provisions that effectively exempt most forms of trading in energy products from the Commodity Exchange Act, contrary to the recommendations of the PWG. As stated previously in testimony in both the House and Senate, the Commission is deeply concerned that these exemptions are not based upon sufficient evidence to warrant their inclusion in the legislation. One of the principal factors cited by the PWG in recommending an exclusion for OTC financial derivatives was that nearly every dealer in those products is either subject to, or affiliated with, an entity subject to federal financial regulation. This cannot be said with respect to most participants in trading energy products.

The Commission also notes that the views of other agencies with responsibilities for regulating various aspects of the cash markets in energy products have not been solicited. The recommendations of the President's Working Group on Financial Markets

for treatment of OTC financial transactions was preceded by nearly a year of deliberation and study by the four principal agencies of the Working Group, resulting in a consensus on treatment of those products. No such process has been undertaken by the agencies with responsibilities for various aspects of trading in energy products, and we are therefore concerned that the potential consequences of this part of the legislation have not been thoroughly considered.

While the exemption in energy products is common to all three versions of the legislation—those of the Committees on Agriculture, Banking & Financial Services and Commerce, respectively—the Commerce Committee version extends the exemption to apply to metals products, as well.

With respect to the exemption for metal commodities, the Commission has serious reservations about the extent to which H.R. 4541 would exempt these products from the CEA. In the Commission's experience, metal commodities have an unambiguous history of susceptibility to manipulation and we believe that futures and options transactions in these commodities require full regulatory oversight by the CFTC to protect the markets and their participants from unlawful practices. For example, in 1998 the Commission settled a major copper manipulation case, in which one company acquired a dominant and controlling cash and futures market position during 1995 and 1996 that caused copper prices worldwide to rise to artificially high levels. That case resulted in the offending company's paying the largest civil monetary penalty in U.S. history to that time. In fact, the President's Working Group Report explicitly stated that these markets have been susceptible to manipulation and to supply and pricing distortions and therefore recommended that they not be excluded from the CEA.

The Commission recognizes that the legislation attempts to address some of these concerns by providing the agency with anti-fraud and anti-manipulation authority. Charging the Commission with the responsibility to police for fraud and manipulation, however, without conferring commensurate authority to promulgate regulations, where necessary, leaves the CFTC inadequately equipped to fulfill those responsibilities.

While there are many important provisions of H.R. 4541 that warrant enactment, the Commission cannot recommend that the Congress move forward on those provisions unless the basic issues outlined here are addressed. The Commission is pleased to continue working with you and other interested parties to reach a satisfactory solution to these important issues.

Sincerely,

WILLIAM J. RAINER.

Mr. Speaker, I do not believe that now is the time to give big energy companies trading in energy derivative products a regulatory pass.

Let me quote and note that the commodity modernization bill is otherwise very, very important legislation for the conduct of our Nation's financial services that I support.

I urge the leadership to give this bill a full hearing in the House and not place it on suspension, and I urge my colleagues to remove the exemption for energy derivatives so that the public may know what the price is.

CORPUS CHRISTI

The SPEAKER pro tempore (Mr. QUINN). Under the Speaker's announced policy of January 6, 1999, the gentleman from Indiana (Mr. SOUDER) is recognized for 20 minutes as the designee of the majority leader.

Mr. SOUDER. Mr. Speaker, some of what I have to say here this afternoon is not going to be very comfortable to hear, and it is, quite frankly, pretty uncomfortable for me to come forth and to talk about this directly.

The poster my colleagues see beside me, and I will refer to this a number of times, is about a play called "Corpus Christi." This is representing Jesus Christ. This is the Apostle Peter, his supposed homosexual lover. This play depicts all the Apostles as the homosexual lovers of Christ.

The reason that this is of concern to me is not because the Government directly funded it, because we did not, but because through the National Endowment for the Arts we funded this theater before the play and we have continued to fund this theater after they insulted those of us who believe that Jesus Christ is our Lord and Savior. They continued to insult us by funding this theater that did this play, among others.

I want to put this in a little bit of context. We are having a tough debate right now over the Interior appropriations bill. I strongly support most of the money in the Interior appropriations bill and have been an advocate for it.

Furthermore, I want to make it clear, as I have before on this floor, that I am not a libertarian who favors eliminating the National Endowment for the Arts unless it cannot restrict itself to really funding true art.

I believe there is an important role for arts in society. In fact, I came on this floor after having led a fight in my first term to try to first eliminate the National Endowment for the Arts and then to freeze the funds. I came to this floor to say that I believe that Bill Ivey has made some progress at the National Endowment for the Arts in eliminating some of the types of performance art and in trying to direct the arts to different parts of the country.

I also said in my statement, which I will ask unanimous consent to reinsert at this point, why I believed it is important to fund the arts and why I believe that some of the charges that some of the conservatives were making against the National Endowment for the Arts had not been researched.

In fact, I went into detail on this particular play showing how the National Endowment for the Arts did not know for sure what Terrance McNally was going to produce when they funded this theater. But I did not know at the time because the National Endowment did not provide me with the information,

and since then the American Family Association has, that we were continuing to fund the theater after they insulted us, after they in effect told the American people to go stick it in your ear, then we continued to fund them.

That is not progress; that is a step backwards. We are not going to buy this wink and a blink where we say, "okay, we are not going to fund the play directly. We will just fund the theater." Then we will fund the theater again. Most of these theaters are small theaters. The money moves between the plays. It is a tad too cute to convince me or anyone else that we are not funding the play directly when we are funding the stage, when we are funding the repertory company, when we are funding in effect indirectly their advertising and their overhead.

Of course they are funding the play. And to have the gall to try to imply otherwise to me and for me then to come down to this floor to defend the National Endowment for the Arts when in fact they were continuing to fund the very things that I was trying to say they had tried to clean up, I feel deceived and duped on top of trying to help them work it out.

Even that said, the conservatives in this House went to our leadership and went to our appropriators, and the gentleman from Ohio (Chairman REGULA) has stayed firm and our leadership has stayed firm with the House position to keep it at a freeze. But since the other body wants to increase the funds, we came forth with a compromise that any new funding would go to a separate fund targeted towards smaller and rural areas where there clearly is a shortage of arts dollars in America, where they do not have the resources to do the arts and put the new funding there and also ask that, in the regular NEA, that there either be a restriction that funds could not be given to these individual theaters, which we have learned we cannot do in the limitation of funds, or that there be additional reduction in the NEA direct funding from \$98 million down to \$96 million and that \$2 million be put over into the reserve fund.

We have bent over backwards to try to come up with a compromise on this, even though many of us are so offended by the gratuitous type of art. We have said we will stand aside knowing that the majority of this body and the Senate want to increase the funds; but there has to be some kind of restriction, including the one other thing we asked for, that obscene and pornographic theater could not be funded.

The truth is we know that by banning obscene and pornographic funding that is just language, because the truth is NEA could declare that it is not obscene or not pornographic. But it is important symbolism here of what we in Congress intend the arts to be. We do not intend it to insult the majority of